

FRANK LUMBER CO., INC.,

AGBCA No. 2002-111-3

Appellant

Representing the Appellant:

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Representing the Government:

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DECISION OF THE BOARD OF CONTRACT APPEALS

April 12, 2002

Before POLLACK and VERGILIO, Administrative Judges.

Opinion for the Board by Administrative Judge POLLACK.

This appeal arises out of a December 18, 2001, timely appeal of a final decision of the Contracting Officer (CO) on a claim arising out of Contract No. 094577, Cloudy Timber Sale, between Frank Lumber Co., Inc., of Mill City, Oregon, and the U. S. Department of Agriculture, Forest Service (FS), Willamette National Forest, Eugene, Oregon. The appeal concerns a claim for \$47,393.61 to cover costs incurred by Frank Lumber in providing security measures to the sale area. According to the CO, both the FS and Appellant had reason to believe that anti-logging protesters would try to stop logging activities on this timber sale. There was no dispute that the FS did provide some law enforcement personnel to secure the area and particularly to secure the timber. There also did not appear to be a dispute that Frank Lumber agreed to protect workers and equipment in the sale area. At issue, however, was whether the FS had agreed with Frank Lumber, either directly or implicitly, that the FS would compensate Frank Lumber for costs which would be incurred by Frank Lumber in providing its part of the protection. The FS denied that any direct or implicit agreement was made.

The Board has jurisdiction over this timely-filed appeal pursuant to the Contract Disputes Act of 1978 (CDA), 41 U.S.C. ' ' 601-613, as amended.

On March 12, 2002, the Board held a telephone conference with representatives of the parties. At that time the Board reviewed various observations that the Board had made from the record. In the conference, the Board shared with the parties some concerns as to the contract agreement theory being pursued by Appellant. The Board laid out the general elements of law and facts that Appellant would have to present and to establish in order for it to prevail on that theory of recovery. In addition, the Board set specific dates for either conducting a hearing or moving forward on the record.

Soon after the conference and by letter of March 20, 2002, Appellant wrote the Board. In that letter Appellant stated that upon reviewing the case it did not wish to continue with either a hearing or presentation on the record.

DECISION

Based upon the letter from the Appellant that it wishes not to proceed further, the Board dismisses the appeal with prejudice.

HOWARD A. POLLACK
Administrative Judge

Concurring:

JOSEPH A. VERGILIO
Administrative Judge

Issued at Washington, D.C.
April 12, 2002